

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

CASE NO. 2:19-cr-20626-NGE-DRG

v.

EMANUELE PALMA,

Defendant

_____/

UNITED STATES' MOTION FOR A RULE 502(d) ORDER

Further to its August 16, 2022 submission and the parties' August 17, 2022 teleconference with the Court, the United States respectfully requests that the Court enter an order under Fed. R. Evid. 502(d) related to the anticipated production of discoverable documents from the records of the Environmental Enforcement Section of the Environment and Natural Resource Division of the Department of Justice ("DOJ-ENRD Civil"), the U.S. Securities and Exchange Commission ("SEC"), the Environmental Protection Agency ("EPA," including its Office of Transportation and Air Quality ("OTAQ") and its Air Enforcement Division ("AED")), and the California Air Resources Board ("CARB") (collectively, the "civil agencies"). The United States submits that entering a Rule 502(d) order in this case would further

the parties' interests by facilitating the United States' ability promptly to collect and review documents previously withheld or redacted by the civil agencies on the basis of privilege (the "Civil Agency Materials") and to produce all discoverable Civil Agency Materials to the Defendant—while protecting all privilege claims asserted by the civil agencies regarding the Civil Agency Materials. Defendant Palma does not take a position on this motion or the proposed 502(d) order, although he asserts his understanding that any Order will not preclude the admission of any documents produced pursuant to a Rule 502(d) order on the basis of state or federal law privilege. The Court should therefore grant this Motion and enter the accompanying Proposed Order to facilitate prompt disclosure of discoverable Civil Agency Materials to Defendant Palma.¹

Specifically, the United States requests that the Court enter an Order under Fed. R. Evid. 502(d) that disclosure of the civil agencies' documents to the United

¹ As the Court is aware from prior briefing on this issue, *see, e.g.*, ECF Nos. 116, 154, Defendant Palma has generally and categorically objected to privilege logs initially collected from the civil agencies and produced to the Defendant. Without conceding or waiving the United States' initial arguments regarding the generic nature of Defendant Palma's objections and the overbreadth of the relief sought in his initial Motion for Rule 16 and Brady Material, the United States has nonetheless been coordinating with the civil agencies to facilitate the production of revised privilege logs, if needed, to address at least certain issues identified by the Defendant and narrow the disputed issues before the Court. At this point, however, rather than continue to expend the parties' and the Court's resources on the revision, production, and potential further litigation over revised privilege logs regarding the Civil Agency Materials that the United States has not yet reviewed, the United States submits that the Rule 502(d) Order requested in this Motion would provide a more efficient and productive path forward here.

States—and, ultimately, the anticipated disclosure of the discoverable Civil Agency Materials to the Defendant—does not constitute a waiver of any applicable privilege(s) or protection(s) in this case or any other federal or state proceeding, case, matter, or investigation. *See* Fed. R. Evid. 502(d) (“A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court – in which event the disclosure is also not a waiver in any other federal or state proceeding.”); *see also* Fed. R. Evid. 501 (governing applicable privileges). Courts have used 502(d) orders to allow for the efficient production of privileged materials in analogous contexts. *See, e.g., United States v. Bases*, 1:18-cr-48, ECF Nos. 433 (Apr. 29, 2021), 437 (Apr. 30, 2021) (N.D. Ill.) (entering proposed Rule 502(d) order regarding the production of materials from the CFTC).

In addition, to protect from disclosure to the public any privileged or other “Protected Information” contained in the Civil Agency Materials, the United States requests that the Court include in any Rule 502(d) order a provision that the Civil Agency Materials are subject to all the restrictions, protections, and sealing or redaction procedures provided in the Amended Protective Order governing discovery in this case. *See* ECF No. 69.

CONCLUSION

For the foregoing reasons, the United States requests that the Court grant this Motion and enter the Proposed Order relating to the United States' anticipated collection, review, and production to Defendant Palma of discoverable Civil Agency Materials. The United States also respectfully reserves the right to supplement this Motion to seek any additional order(s) that may be necessary to effectuate the Proposed Order and to facilitate the United States' prompt collection, review, and production to Defendant Palma of discoverable Civil Agency Materials.

Dated: August 25, 2022

Respectfully submitted,

DAWN N. ISON
United States Attorney

/s/ John K. Neal
JOHN K. NEAL
Chief, White Collar Crime Unit
Assistant United States Attorney
TIMOTHY J. WYSE
Assistant United States Attorney
Eastern District of Michigan

LORINDA I. LARYEA
Acting Chief

/s/ Michael T. O'Neill
MICHAEL T. O'NEILL
Assistant Chief

TODD KIM
Assistant Attorney General

/s/ Todd W. Gleason
TODD W. GLEASON
Senior Trial Attorney
U.S. Department of Justice
Environmental Crimes
Section
Environmental and Natural
Resources Division

AMANDA SWANSON
MICHAEL P. MCCARTHY
Trial Attorneys
U.S. Department of Justice
Criminal Division, Fraud Section

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2022, I will serve a copy of the foregoing
upon all counsel of record via the court's electronic CM/ECF system.

/s Michael T. O'Neill
Michael T. O'Neill
Assistant Chief
U.S. Department of Justice
Criminal Division, Fraud Section